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No. 06-517

Supreme Court, U.S.
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In The Supreme Court of the United States

U.S. BANK NATIONAL ASSOCIATION,
as Indenture Trustee,

Petitioner,

v.

JPMORGAN CHASE BANK, as Trustee;
JEFFERSON-PILOT LIFE INSURANCE COMPANY;
JEFFERSON-PILOT FINANCIAL INSURANCE
COMPANY; TYNDALL PARTNERS, LP; and
TYNDALL INSTITUTIONAL PARTNERS, LP,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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REPLY

In our petition, we showed that this case directly raises the question whether federal courts may selectively apply the discounting command in § 502(b) of the bankruptcy code, 11 U.S.C. § 502(b). We also showed that this case is an ideal vehicle for considering and deciding the question presented, because it arises on stipulated facts (Pet., at 4),[1] and the outcome of the case turns on the issue. Pet., at 4-6, 8. Respondents' brief in opposition does not contest any of this.

Nor, remarkably, does respondents' brief in opposition defend the Third Circuit's holding that § 502(b) may be selectively applied. Even as the headings declare that the Third Circuit's decision is correct, the body of the brief abandons the court's interpretation in favor of a different one—that § 502(b) unambiguously forbids discounting any future principal obligations to present value. This is a position that the Third Circuit expressly rejected. App., at 22 ("We do not hold here that 11 U.S.C. § 502(b) *never* authorizes discounting a claim to present value.") But it is one that respondents now unquestionably adopt: "Congress . . . did not intend that the principal amount of a claim be discounted." Br. Opp., at 29. *See also id.*, at 22 (Congress "did not intend courts to discount claims"); *id.*, at 24 ("The bankruptcy court lacked the authority to engraft a discounting feature onto section 502(b)"); *id.*, at 28 ("When Congress enacted section 502(b), it . . . eliminated the only form of discounting that [prior statutes]

[1] The brief in opposition describes a larger amount of claims as being at issue than the petition does. While the case was on appeal, some of the claims were settled. The smaller amounts in the petition accurately describe the claims that remain at issue in this Court.

permitted by refusing to reauthorize the discounting of unmatured non-interest-bearing debts.").

Respondents' position establishes two things that are relevant to this Court's decision to grant review:

First, respondents' abandonment of the Third Circuit's decision in favor of an interpretation that no court has ever adopted shows just how indefensible the decision below is. The Third Circuit maintained that § 502(b)'s command to "determine the amount of" allowable claims "as of the date of the filing of the" bankruptcy petition sometimes does and sometimes does not require discounting. But surely it does not mean both. Even respondents agree that § 502(b) either requires discounting to present value or it does not. There is no textual grant of discretion, only a question of interpretation. Pet., at 14. Section 502(b) cannot be read sometimes one way and sometimes another. Pet., at 19-20.

Second, and more important, respondents' own position defeats their attempt to explain away the clear split in the circuits on the question presented. Before the decision below, courts had consistently held that § 502(b) unambiguously requires all claims for future obligations to be discounted to present value to place them on equal footing with claims for presently due obligations. Pet., at 11-12 (citing decisions from the Sixth and Tenth Circuits and other lower courts). The Third Circuit created a split with these decisions when it considered and rejected their interpretation. App., at 24 n. 13, 28. To minimize the split, respondents would have to show there is a meaningful difference—for purposes of interpreting and applying § 502(b)—between claims for principal only (the facts of the earlier cases) and claims for both principal and

interest (the facts of this case). But respondents' argument on the merits shows that they do not believe there is a meaningful difference any more than petitioner does. Like petitioner, respondents believe that all future claims must be treated the same under the plain text of § 502(b). Either discount them or not, with no discretion to pick and choose. Br. Opp., at 22, 24, 28, 29 (quoted above).

The conflict between respondents' attempt to distinguish away the circuit split and their argument on the merits is most stark where, in a single paragraph, respondents first cite the alleged distinction between interest-bearing and non-interest-bearing claims and then reject it:

> The Third Circuit found a critical difference between such cases [that did not involve claims for interest] and the instant matter, in which Respondents had bargained for the right to receive interest. As discussed below, discounting was not authorized under the statutory predecessors to section 502(b), except for non-interest bearing obligations. When Congress enacted section 502(b), it deleted *any authorization for discounting*, and also explained in legislative history that discounting was not authorized.

Br. Opp., at 14 (emphasis added).

Ultimately, what this Court unanimously held in *Pennsylvania Dept. of Corrections* v. *Yeskey* is equally true in this case: "[T]he fact that a statute can be applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth." 524 U.S. 206, 212 (1998) (citations and quotation marks omitted). That is true not only of § 502(b), which unambiguously requires all claims for future obligations to be

discounted, but also of the decisions of the circuit courts adopting that interpretation. On the simple interpretive question of whether claims for future obligations must be discounted, the Sixth and Tenth Circuits hold "always," the Third Circuit holds "sometimes," and respondents argue "never." A clear split exists that this Court should resolve.

Nor does the clutter of respondents' arguments on the merits diminish the clarity of the question presented or the quality of this case as a vehicle. This is not the time to address respondents' merits arguments in full. Suffice to say that respondents repeatedly cite unexceptional bankruptcy decisions for propositions for which they do not stand. They cite cases holding that a bankruptcy filing accelerates all debts for purposes of *filing* a claim for the proposition that all such claims are *allowed*. Br. Opp., at 18-19. That is confusing two separate things, as we explained in our petition. Pet., at 3-4. Respondents similarly cite cases holding that a bankruptcy filing accelerates all amounts guaranteed by a debtor for purposes of *filing* a claim for the proposition that all such claims are also *allowed*. Br. Opp., at 29-30. Neither of these arguments (or the others like them) stand up under any scrutiny. More importantly, whatever their merit, they provide no barrier to granting review in this case.

And the Court should grant review. The case directly presents the question whether courts may selectively apply § 502(b) to discount some claims for future obligations but not others. The circuits are divided on this issue. And the issue, because it implicates the power to allow and disallow claims that is "an essential part of the bankruptcy process" (4 *Collier on Bankruptcy* ¶ 502.01

(15th ed. 2006)), is of "basic importance in the administration of" bankruptcy law. *Gardner* v. *New Jersey*, 329 U.S. 565, 573 (1947).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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